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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/781,303

02/18/2004

Rafail Zubok

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530 7590 11/09/2007
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EXAMINER

WOODALL, NICHOLAS W

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

11/09/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/781,303

Applicant(s)

ZUBOK ET AL.

Examiner

Nicholas Woodall

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3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 1-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Amended claims 1-7 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 1-7 are directed to an intervertebral disc replacement device comprising a combination of parts and the original claims were all directed to a retaining clip and a retaining clip assembly.

Since applicant has received an action on the merits for the originally presented invention, i.e. the retaining clip, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-7 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Allowable Subject Matter

2. The indicated allowability of claims 10 and 11 is withdrawn in view of the reference(s) to Rygg. Rejections based on the cited reference(s) follow.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 8-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rygg (U.S. Patent 3,278,107) in view of Powers (U.S. Publication 2005/0033430).

Regarding claim 8, Rygg discloses a device comprising an applicator and at least one retaining clip (see Figures 1 and 2 below). The application includes a first applicator arm and a second applicator arm extending in substantially the same direction from a common bending elbow (see Figure 1). The at least one retaining clip is capable of being removably secured to the first end of the first applicator arm and includes a body member having a first side, a hook flange extending from the body member, and at least one lateral flange extending from the body member (see Figure 2). Regarding claims 9 and 15, Rygg discloses a device wherein the first applicator arm includes a protruding member extending from the first end thereof capable of being removably secured with an opening extending at least partially into a body member of the first retaining clip. Regarding claims 10 and 15, Rygg discloses a device further comprising a second retaining clip capable of being removably secured to a first end of the second applicator arm. Regarding claims 11 and 15, Rygg discloses a device wherein the second applicator arm includes a protruding member extending from the first end capable of being removably secured with an opening extending at least partially into a body member of the second retaining clip. Rygg fails to disclose the device further comprising an enclosure (claim 8). Powers teaches an enclosure capable of holding a set of sterilized surgical instruments that is made of a non-permeable material, such as plastic (page 2 paragraph 021) and the enclosure being sealed and devoid of substantially moist air by using a seal or cover that is removably attached to the enclosure (page 2 paragraph 023) in order to maintain the sterility of the surgical instruments until such a time as the instruments are to be assessed (page 2 paragraph 020). It would have been

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obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of Rygg further comprising an enclosure in view of Powers in order to maintain the sterility of the surgical instruments until such time as the instruments are to be assessed.

Figure 1

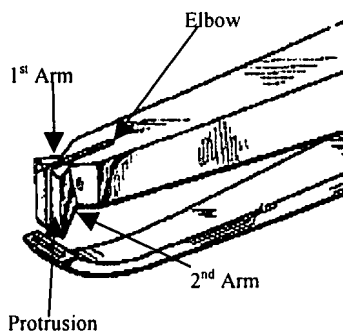
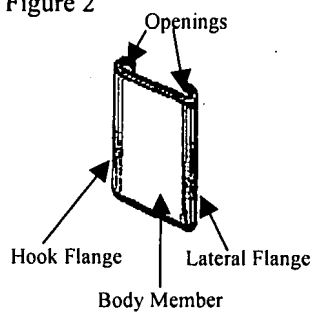


Figure 2



Response to Arguments

5. Applicant's arguments filed 08/27/2007 have been fully considered but they are not persuasive. The applicant's argument that the limitations added to claim 8 overcome the prior art of Rygg is not persuasive as discussed above. The examiner has withdrawn the previously indicated allowability of claims 10 and 11 as discussed above. The examiner believes that the applicator and the retaining clips of Rygg meet the structural limitations of claims 8-15. Furthermore, the examiner believes that Rygg

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discloses a device comprising a second retaining clip, wherein a protrusion of the second applicator arm is capable of being secured in an opening of the second clip. The claims do not require the first and second applicator clips to be secured to the first and second applicator arms simultaneously, therefore as long as each clip has an opening capable of being secured to the first and second applicator arms the limitations of the claim are met.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is 571-272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



EDUARDO C. ROBERT
SENIOR PATENT EXAMINER